

DONALD JARDINE

IBLA 81-872

Decided September 21, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 157517 through N MC 157520.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Mining claims are properly declared abandoned and void where copies of the notices of location are not filed with the proper Bureau of Land Management office within the time periods prescribed by sec. 314 of the Federal Land Policy and Management Act of 1976.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: George W. Abbott, Esq., Minden, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald Jardine has appealed the June 24, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the Gardenia Nos. 9 through 12 lode mining claims N MC 157517 through N MC 157520, abandoned and void because the notices of location for the mining claims were not filed in the proper BLM office 1/ within 90 days

1/ The second paragraph of the decision erroneously states that the claims were filed in the California office. In fact, the reverse is true. The claims are located in California but were filed in Nevada.

after the date of location, as required by 43 CFR 3833.1-2(b). The claims, situated in Alpine County, California, were located April 11 and 12, 1980, and copies of the recorded location notices were filed with the Nevada State Office on July 8, 1980. 2/

Appellant contends he had been informed in July 1980 that he could file his location notices at the Nevada State Office, which would forward them to the California State Office, and that the effective date of his filing would be the date of receipt by the Nevada State Office. He avers that in August 1980 he was reassured that the foregoing was correct and that his Gardenia mining claims were in good standing so far as BLM was concerned. He argues that, as his filing with BLM was within 90 days after the date of location, the Board should reverse the Nevada State Office decision and declare the filing of the notices of location both timely and at the proper office.

The proper BLM office to receive filings of instruments relating to public lands in the State of California is the California State Office, Sacramento, California, not the Nevada State Office in Reno, Nevada. 43 CFR 1821.2-1(d).

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of unpatented mining claims located after October 21, 1976, to file, within 90 days after the date of location, a copy of the official record of the notice of location in the office of BLM designated by the Secretary of the Interior. 43 CFR 3833.1-2(a) defines "file" as meaning "being received and date stamped by the proper BLM office." Filing is accomplished only when the document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f). Failure to file timely is considered conclusively to constitute abandonment of the mining claim under section 314 of FLPMA. See Omco, Inc., 55 IBLA 77, 79 (1981).

As the claims at issue are situated within California, filing of the copies of the location notices with the Nevada State Office was not filing in the proper BLM office. The decision of the Nevada State Office was correct and it must be affirmed. Timely transmittal of the documents to the wrong BLM office does not meet the requirements where the documents are not filed in the proper office timely. John S. Henson, 47 IBLA 129 (1980).

[2] Assuming appellant received the erroneous information, as alleged, that a BLM employee informed him that the notices of location for the mining claims situated in California could be filed with the Nevada State Office, which would forward them to the California State Office, and that the date of filing would be considered as the date on which the notices were received by the Nevada State Office, it will

2/ It is not explained why the Nevada State Office accepted and serialized these location notices.

avail him nothing. Reliance on such a statement would not be reasonable in light of the fact that the regulation at 43 CFR 3833.1-2(b) expressly requires filing in the "proper" BLM office. "Filing" is defined as "being received and date stamped by the proper BLM office." Use of the term proper office is a clear indication that filing with any BLM office will not suffice and 43 CFR 3833.0-5 specifically refers to the office with jurisdiction under 43 CFR 1821.2-1(d). Mining claimants have constructive notice of the statutes regulating rights on the public lands and regulations duly promulgated pursuant thereto. See John Plutt, Jr., 53 IBLA 313 (1981). Moreover, regulation 43 CFR 1810.3 provides that the United States is not bound by or estopped by acts of officers or agents who enter into arrangement or agreement to do what the law does not sanction, and that reliance upon information or opinion of any employee of BLM cannot operate to vest any right not authorized by law. This Board has no authority to excuse a late filing or to waive the consequences of noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with the BLM California State Office to ascertain if the claims may be relocated.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

